

is adequate. However, if a naval activity receives a request not “reasonably described” it shall notify the requester of the defect and provide guidance on specificity required to begin a search.

(d) *Fees.* (1) Fees may not be used to discourage requesters. If fees are expected to exceed the minimum fee waiver threshold of \$15.00, the requester is required to address fees in the request, i.e., a willingness to pay all fees or those up to a specified amount, or request a waiver/reduction of fees.

(2) To assist naval activities in determining assessable fees, requesters are encouraged to identify the fee category for which they wish to be considered. If the requester believes he/she qualifies for a waiver/reduction of fees, requesters are required to provide specific justification regarding qualification for a waiver so that decision can be rendered. See Subpart D of this Part 701 for further information on fees.

(e) *Treatment of requests which do not meet the minimum requirements.* (1) In those instances when a request does not meet the minimum requirements, naval activities should nonetheless return the requests within 10 working days and advise the requester of how to perfect the request. Naval activities may contact the requester by telephone to refine the request. For example, if a requester has failed to “reasonably describe” the records being sought, he/she may be asked to provide identifying data such as location, timeframe, originator, background information, etc., to enable a search. If the requester has failed to mention fees and fees are applicable, the requester should be provided an estimate of the cost involved in processing the request. When practicable, naval activities are encouraged to contact requesters to clarify what they are seeking.

(2) If a request fails to qualify within this instruction but the requested record is available and releasable in its entirety, the responding official may provide a copy of the record if he or she determines it to be in the best interest of the activity. This provision is within the sole and exclusive discretion of the responsible official of the activity concerned and does not create an excep-

tion to or grounds for waiver of the minimum requirements.

§ 701.7 Procedures for processing FOIA requests.

(a) *Control system.* All requests for records which cite or imply the FOIA must be entered into a formal control system, either manual or computerized, that is designed to track the request from receipt to response. Information contained in the tracking system should at a minimum include the name of the requester, the date of the request, the date the request was received, suspense date, and the date the response was made. This will ensure that the requester is apprised of the status of his/her request within 10 working days and will provide required information should the requester challenge the processing of his/her request.

(1) *Receipt controls.* At a minimum, date stamp the request upon receipt, establish a suspense control record and follow-up procedures, and conspicuously stamp or label the request “FREEDOM OF INFORMATION ACT REQUEST” to indicate priority handling throughout processing. Naval activities are encouraged to assign a FOIA Case Number for each request and to apprise the requester of the number assigned. This number is an effective tool for tracking, filing, and retrieving the request.

(2) *Forwarding controls.* As a rule, requests forwarded to another activity for action should have the letter of referral and envelope conspicuously stamped or labeled “FREEDOM OF INFORMATION ACT REQUEST” and a record shall be kept of the request, and the date and activity to which it was forwarded.

(b) *Time limits.* Once a request has been received by a naval activity having cognizance over the requested record(s), that activity has 10 working days (excluding Saturdays, Sundays, and legal holidays) to issue a letter which advises the requester of the action to be taken on the request (i.e., documents are denied; documents are released; documents will be released within a specific timeframe). If a naval activity is unable to comply with the request within the 10 working day timeframe, then a formal or informal

time extension must be pursued and a letter forwarded to the requester advising of the extension.

(1) A formal time extension letter is issued in those instances where an activity requires up to an additional 10 working days to respond to a request because of the need to:

(i) *Search*. The need to search for and collect records located in whole or part at places separate from the activity processing the request;

(ii) *Examine*. The need to search for, collect, and examine a substantial number of records responsive to a request; or,

(iii) *Consult*. The need to consult with another naval activity or federal agency with a substantial interest in the determination of the request.

(2) A formal time extension response must be issued by the IDA within 10 working days of receipt of the request, describe the circumstance(s) for the delay, and indicate the anticipated date for a substantive response.

(3) In those instances where it appears the request might be ultimately denied, in whole or in part, the appellate authority (i.e., NJAG or OGC) may be consulted by expeditious means prior to authorizing a formal extension.

(4) In those instances when it is anticipated the normal statutory time limits (including the statutory time extension) are insufficient to provide a response, the IDA shall acknowledge the request in writing prior to the expiration of the normal statutory time limits (including the statutory time extension), describe the circumstance(s) requiring the delay and indicate the anticipated date for the substantive response. The requester shall be advised that an appeal may be made to the cognizant appellate authority within 60 calendar days or await a substantive determination by a specified date. It shall be made clear that such an agreement does not prejudice the right of the requester to appeal an adverse substantive determination.

(5) In those unusual cases where the statutory time limits cannot be met and no informal extension has been agreed to, the inability to process any part of the request within the specified

time should be explained to the requester, with notification that the delay may be treated as an initial denial with a right to appeal, or that the requester may agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Further, naval activities should be advised that the requester still retains the right to treat this delay as a defacto denial with full administrative remedies.

(6) Informal extension of time limits—a recommended alternative is to negotiate an informal extension of time with the requester. The advantages include the ability to agree on a mutually acceptable date to respond that exceeds 10 working days, and the letter of confirmation does not require the signature of an IDA. Additionally, it does not impact on the additional days the appellate authority may take when responding to an appeal.

(c) *Decision to release records*. Release authorities may release records under their cognizance which do not qualify for denial under FOIA exemptions. Such responses should be made within the applicable time limits of FOIA and should be processed as follows:

(1) If the requested records are releasable in their entirety, release authorities should forward the records to the requester and advise of any applicable fees.

(2) If the requested records are releasable in their entirety but not yet available, the release authority should notify the requester the request has been approved and the requested records will be forwarded by a specified date.

(3) If the request for examination of records is approved, notify the requester of the time and place.

(d) *Processing documents originated by/created for another activity*. (1) If an official receives a request for records that he or she holds, but which were originated by another naval activity, the official shall normally coordinate with that activity prior to referring the FOIA request and copies of the requested documents to the originator for direct response. The naval activity that initially received the request is responsible for notifying the requester

of the referral. The originating naval activity shall not release or deny such records without prior consultation with the referring naval activity.

(2) If an official receives a request for records that he or she holds, but were created for another naval activity or government agency, the official shall refer the FOIA request and copies of the requested documents to that activity/agency for direct response, after coordination and concurrence. The activity/agency may have an equally valid interest in withholding the record as the naval activity that created it. In such referrals, the naval activity should provide a recommendation concerning release with the referral. The naval activity that initially received the request is responsible for notifying the requester of the referral.

(e) *Processing misdirected requests.* Requesters are not always aware of the correct activity to address a FOIA request.

(1) A request received by a naval activity having no records responsive to the request shall only be referred to another naval activity if the activity contacts the naval activity and confirms its cognizance over the requested information. When a member of the public complies with the procedures established in this instruction for obtaining records, the request shall receive prompt attention and a reply dispatched within 10 working days, unless a delay is authorized. Each naval activity is responsible for developing procedures to ensure the expeditious handling, prompt retrieval, and review of requested records. The 10 working day time limit commences upon receipt of the request by the cognizant activity.

(2) If the cognizant official is unable to respond to the requester within the statutory time limit, he or she may seek a formal or informal extension of time.

(3) If a naval activity has a significant number of requests (e.g., 10 or more), the requests generally will be processed in order of receipt. But a naval activity may commence action on an easily answered request, regardless of its ranking within the order of receipt.

(f) *Decision to deny records in whole or in part.* To deny a requested record that

is in the possession and control of the Department of the Navy, it must be determined that the record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and addressed at subpart B of this part.

(1) Because release authorities cannot deny information, they must forward responsive documents along with their release determination to an IDA for consideration and response to the requester. In those instances, the release authority will apprise the requester that his/her request and responsive documents were referred to the activity having cognizance over the documents for a release determination and direct response to the requester. The referral to an IDA shall include a copy of the request, documents responsive to the request, recommendation on partial/total denial, and supporting rationale for the exemption(s) claimed.

(2) When an IDA receives a referral from a subordinate activity recommending a FOIA request be denied in whole or in part, or receives a FOIA request for documents under his/her cognizance, the IDA shall take one of the following actions within 10 working days:

(i) Deny or release the requested information. If an IDA determines the record contains information which is not releasable under FOIA, and any releasable information contained in the record is not reasonably segregable from the non-releasable information, notify the requester of the exemption(s) claimed and provide procedures to be followed should the requester decide to appeal the determination to appellate authority.

(ii) If unable to respond within the applicable time limits, explain the reason(s) for the delay to the requester, with notification that he or she may treat this delay as an initial denial with a right to submit an administrative appeal to the cognizant appellate authority, or that the requester may agree to await a substantive determination by a specified date. It shall be made clear that any such agreement does not prejudice the right of the requester to appeal an adverse substantive determination.

(iii) If an IDA determines that the requester's claimed entitlement to waiver/reduction of fees is not warranted, IDAs shall notify the requester of such determination, provide the reason(s) for the denial, and advise the requester of the right to appeal the determination to the cognizant appellate authority within 60 calendar days. If the requester appeals the denial to waive/reduce fees, the release of the records may be withheld until the fee is paid or the appellate authority grants a waiver/reduction of fees.

(3) IDAs are responsible for maintaining copies of initial denials in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(g) *Excising documents*—(1) *Classified documents*. Since FOIA requires that all reasonably segregable portions of documents be released to the requester, there will be instances when portions of documents which contain classified markings are subject to release. In these instances, naval activities shall cross through the classified markings that appear at the top and bottom of the document and cross through any classified paragraph markings that are being released. This practice is necessary to eliminate any appearance that a "classified" document was released.

(2) *Unclassified documents*. Naval activities are encouraged to "blank out" and bracket the denied information and annotate the exemption(s) claimed. This practice will permit the requester to easily identify information being withheld and the basis for withholding.

(h) *"Other Reasons" for not releasing a record*. Besides denying a records in whole or in part, there are six "other reasons" for not releasing a record. In most instances, these "other reason" responses do not constitute a denial of information and therefore do not require the signature of an IDA. They are:

(1) *Transferred request*. Requester advised that his/her request and/or requested documents have been transferred to another naval activity or federal agency having cognizance over the requested information for action and direct response.

(2) *Lack of records*. Requester advised that a search of files held by the naval activity has resulted in a failure to locate any responsive records. Such response now requires that a requester be advised of his/her right to appeal the adequacy of the search to the cognizant appellate authority. The response does not normally require the signature of an IDA.

(3) *Failure of requester to reasonably describe records being sought*. Requester advised that his/her request requires specificity with regard to description of the records being sought to enable the naval activity to conduct a reasonable search. Such responses generally apprise the requester of the kind of specificity required.

(4) *Other failures by requester to comply with published rules and/or directives*. Requester advised that he/she has failed to comply with established rules/directives, such as failure to agree to pay fees, and therefore the request is being returned for refinement.

(5) *Withdrawal*. Requester contacted the naval activity by telephone or letter and advised he/she wishes to cancel the request or appeal.

(6) *Not an agency record*. Requester advised the information/records he/she seeks is not an agency record as defined by § 701.3 of Subpart A.

(i) *Consultation/coordination*. The Department of the Navy processes thousands of FOIA requests annually. Because there is no central repository for records and no central release/denial authority, proposed responses shall be properly coordinated and appropriate officials consulted prior to a response being made to the requester. Specifically:

(1) Naval activities and federal agencies with a substantial interest in the subject matter of the requested records should be consulted prior to release or denial of information.

(2) Public affairs officers or the Chief of Information (CHINFO) should be consulted when a FOIA request is received from a news media representative, the records requested are considered newsworthy, or a denial of a request is expected to be publicly challenged. CHINFO should be promptly notified of any release having evident public affairs implications and a copy

of the request and response should be provided.

(3) The appropriate JAG attorney or field counsel should be consulted on the interpretation and application of this instruction where a denial of a request is expected to be judicially challenged.

(j) *Response to the requester.* (1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he or she has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the IDA's name, rank, and title, shall cite the specific exemption(s) that apply in sufficient detail, and provide the requester with the name and address of the appellate authority, should the requester desire to file an appeal. When claiming exemption "(b)(1)," IDAs shall to the extent reasonably feasible, provide the requester with a summary of the applicable criteria for classification. Additionally, the marking "For Official Use Only" on a requested document does not constitute a basis for denial. Rather, it alerts the reviewer that the document may contain information which is protectible under exemptions (b)(2) through (b)(9). It is up to the reviewing official to advise the requester of the applicable exemptions and to release all "reasonably segregable" information.

(k) *Fees.* The final response to the requester should contain information on the fee status of the request. Generally, information shall reflect one or more of the following conditions:

(1) "The fees for processing your request total \$. Please forward your check or money order made payable to the Treasurer of the United States to this office within 30 days." Subpart D

of this part addresses when fees may be collected in advance of forwarding the documents.

(2) All fees have been received.

(3) Fees have been waived because they fall below the automatic fee waiver threshold.

(4) A request for waiver/reduction of fees has been denied.

(5) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

(6) Fees due in a specified amount have not been received (see subpart D of this part for specific information on FOIA fees and fee rates for technical data).

§ 701.8 Records requiring special handling.

The following actions shall be taken on requests for:

(a) *Classified records.* (1) If a naval activity receives a request for information whose existence or nonexistence is itself classifiable under Executive Order 12356, 50 U.S.C. 401, the naval activity shall refuse to confirm or deny the existence or nonexistence of the requested information.

(2) If a naval activity receives a request for documents in its custody that were classified by another agency, or which contains information classified by another agency, it shall refer the request and copies of the requested documents to the originating agency for processing, and may, after consultation with the originating agency inform the requester of the referral. Referred records shall be identified consistent with security requirements. In cases where the originating agency determines they can neither confirm nor deny the existence or nonexistence of the requested information, the referring agency shall deny the request.

(3) If a naval activity receives a request for classified records or information originated by another naval activity, for which the head of the activity is not the classifying authority under OPNAV Instruction 5520.1 series, "Department of the Navy Information and